INFOLEX
CONSULTANTS

LEGAL INSIGHTS:
HOSPITAL & HEALTHCARE

RECENT IMPORTANT LEGAL DEVELOPMENT

1. **LEVELLING OF ALLEGATIONS FOR MEDICAL NEGLIGENCE AGAINST A DOCTOR OR HOSPITAL OR INSTITUTION, SHALL BE SUBSTANTIATED WITH EVIDENCE AS A PROOF FOR LAPSE IN DIAGNOSIS, TREATMENT OR POST OPERATION CARE.**

   In the case titled as ***Smt. Sarla Devi v. Northern Railway Central Hospital & Ors.*** *[CC/2227/2016]*, the Ld. NCDRC, New Delhi it was noted that the allegation that the patient remained unattended for several hours or that there were unjustified delays in diagnosis or surgery was rejected. The Commission held that the complainant's claim that the patient reached Batra Hospital at 4 PM was contradicted by documentary evidence, which showed arrival at 11 PM. It also found no irregularity or foul play in the treatment notes or timings, holding that allegations of record tampering were unproved.

   In reaching its conclusion, the Commission relied on well-established principles laid down by the Supreme Court in ***Kusum Sharma v. Batra Hospital*** [*(2010) 3 SCC 480]*, Bombay Hospital & Medical Research Centre v. Asha Jaiswal *[(2021 SCC OnLine SC 1149)]*, and Chanda Rani Akhouri v. M.A. Methusethupati *[(2022 SCC OnLine SC 481)]*, Jacob Mathew Vs. State of Punjab *[(2005) 6 SCC 1]*, Dr. Harish Kumar Khurana Vs. Joginder Singh *[(2021) 10 SCC 291],* which emphasize that medical negligence must be proved through cogent evidence and that mere allegations or differences in medical opinion do not constitute negligence.

2. **FAILURE TO OBTAIN CONSENT FROM A PATIENT, AGAINST RISKS AND COMPLICATIONS INVOLVED IN A MEDICAL TEST OF PATIENT, CONSTITUTES DEFICIENCY IN SERVICES AND MEDICAL NEGLIGENCE.**

   In the case titled as ***Sh. Sandeep Gupta v. Maxx Super Speciality Hospital & Ors.*** *[SC/5/CC/12/2014]*, the Ld. SCDRC, Uttarakhand had noted that:

11. Upon perusal of the record, it is evident that the opposite party Nos. 1 to 5 have not produced any material to establish that a consent was obtained from the patient or her attendants prior to undertaking DSE test. There is no specific consent form showing details of nature of the procedure, its risks, complications nor there is any record demonstrating that such information was ever explained to the patient or her attendants. The requirement of obtaining consent prior to conducting the DSE test was necessary as was confirmed by Dr. Preeti Sharma – Opposite party No. 3, who was present during the hearing. The absence of such consent amounts to deficiency in service and constitute negligence on the part of the opposite party No. 5.

3. FAILURE TO INVESTIGATE IV FLUID REACTION, LEADING TO PATIENT'S DEATH, MAKES HOSPITAL LIABLE FOR DEFICIENCY IN SERVICES.

In the case titled as ***Mrs. Richa Navendu Shrivastava v. Fortis Healthcare & Ors***. *[CC/292/2013]*, the Ld. NCDRC, New Delhi had noted that:

78. […] This absence of any attempt on the part of the Hospital to investigate into the cause relating to the adverse impact of the infusion of the fluid in our opinion is a mismanagement which is a deficiency and this also has been opined by the AIIMS in its opinion dated 21.12.19. We therefore hold the Hospital to be liable for negligence in the management and lapse in taking appropriate steps for getting the contents of the fluid infused into the patient examined forensically and medically, and the probability casting a doubt on this aspect by the AIIMS, calls for imposition of an adequate compensation to that effect.

4. **OMISSION OF AILMENT FROM THE TYPED DISCHARGE SUMMARY NOT A CLERICAL OR TYPOGRAPHICAL ERROR BUT NEGLIGENCE.**

In the case titled *as* ***Maxx Balaji Hopital & Anr. v. Smt. N.R. Mishra*** *[FA/110/2015],* the Complainant had 3 fractures, but was treated only towards 2 of them. In this case of Appeal by Hospital institution, the Ld. SCDRC, New Delhi had noted as follows:

16. At this juncture, it is worthwhile to mention that it is a settled position of law that if medical practitioner falls short of following the standard medical protocol, which is expected of an ordinary prudent doctor, a clear case of medical negligence is made out. The medical practitioner though, is not required to possess the highest level of expertise, but is expected to adhere to the standard of extending reasonable care and following the standard medical procedure, which in the instant case, the Appellants have evidently failed to do.

5. **DEATH OF PATIENT OUTSIDE THE COURSE OF TREATMENT *(DUE TO MASSAGE AT HOME)* NOT TO BE COUNTED AS MEDICAL NEGLIGENCE.**

In the case titled *as* ***Dr. Sau Majushree Murli Boob v. Aryan Vijay Ambore*** *[SC/CB3/27/A/86/2020], SCDRC, Maharashtra (Amravati)* had noted as follows:

48. After carefully going through the evidence, medical records and expert opinion of the Medical Board, arguments advanced by both the parties and authorities cited above this Commission with its findings come to the conclusion that the Complainant has failed to prove any act of omission or commission on the part of the appellant which amounts to negligence. The copy of the report of Medical Board is filed on record, which is self explanatory. That it appears from the record of the Medical Board that after the patient Sariksha was discharged from the hospital of the opponent, as per the practice prevalent in India, massage to the abdomen must have been given to the patient Samiksha at her home and there is a possibility that the massage might have been given with full urinary bladder resulting into injury to or rupture of the urinary bladder. The opponent was not

at all negligent and she was not responsible for the injury or rupture of the urinary bladder of the patient due to massage.

6. FALSE ASSURANCES OF IVF SUCCESS CONSTITUTES DEFICIENCY IN SERVICES AND UNLAWFUL TRADE PRACTICE.

In the case titled *as* ***Seeja K. M. v. M/s Broun Hall International India & Ors.*** *[CC/306/2016], DCDRC, Ernakulam* had noted as follows:

"[...] Under Section 2(1)(g) and 2(1)(r) of the Consumer Protection Act, 1986. "deficiency in service" and "unfair trade practice" include acts misrepresentation and failure to provide promised services. The opposite parties made false promises through unauthorised agents and induced the complainant to pay a substantial amount. The treatment was never rendered Such conduct squarely falls under both "deficiency in service" and "unfair trade practice".

The failure to provide promised treatment amounts to a deficiency in service. The mental harassment and deficiency of service attract liability for compensation. [...]"

7. TESTING LABS LIABLE FOR DELIVERING / PROVIDING WRONG AND ERRONEOUS TEST REPORTS.

In the case titled *as* ***Dr. Lal Path Labs v. Mr. Inder Prakash Wadhwa*** *[FA/984/2014],* SCDRC, New Delhi had noted as follows:

"19. The Appellant has contended that the compensation of Rs. 3,50,000 awarded by the District Commission is arbitrary and without an evidentiary basis. In this regard it is to be noted that the medical expenses incurred by the Respondent were directly attributable to the Appellant's erroneous report, which falsely indicated life- threatening conditions and necessitated emergency hospitalization. The discharge summary from Max Hospital explicitly links the admission to the "erroneous outside lab report," establishing a clear

causal connection between the Appellant's deficiency and the Respondent's expenses. Being misdiagnosed with life threatening conditions and undergoing unnecessary hospitalization constitutes severe psychological trauma. The mental agony and physical suffering cannot be understated. Also, the prolonged litigation justifies litigation costs as a component of compensation. Considering the facts and circumstances of this case, we find the compensation awarded by the District Commission to be just and reasonable."

8. MISPLACEMENT OF STEM CELL SAMPLE BY STEM CELL BANKING, AMOUNT TO NEGLIGENCE.

In the case titled *as* ***LifeCell International Pvt. Ltd. v. Sharanya Sinha*** *[FA/532/2024],* SCDRC, New Delhi had observed that LifeCell was negligent for failing to ensure safe delivery of the sample. It emphasized that the complainant fulfilled her contractual duties, and the loss occurred solely due to LifeCell's failure. The Commission rejected the argument of third-party responsibility since LifeCell did not provide evidence of taking action against the transporter.

The Commission referred to the case of ***Rajesh Jhorawat vs. LifeCell International Pvt. Ltd.,*** where Rs. 20 lakhs were awarded in a similar case. It also cited ***Anita Merchant vs. Suneja Towers***, holding that compensation should consider all relevant factors but not include compound interest. The irreparable nature of the complainant's loss was considered, as the opportunity to store her child's stem cells was a one-time event. The appeal was dismissed, and the Rs. 20 lakh compensation was upheld.

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